IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.2319 of 2007
Date of Decision: August 31, 2007

Gurmeet Singh **....Appellant**

Versus

Jaswinder Kaur **...Respondent**

Before: Hon'ble Justice R.S. Madan

Present: Mr. Anil Kumar Garg, Advocate for the appellant.

R.S. Madan (J).

1. This regular second appeal is directed against the judgment and decree dated 02.06.2007 rendered by the Additional District Judge, Barnala in civil appeal No.194 of 2004, whereby the defendant's appeal preferred against the judgment and decree of the trial court for the recovery of Rs.1,95,000/- was dismissed.

2. It is the case of the plaintiff-respondent before the trial court that defendant had borrowed a loan of Rs.1,50,000/- on 11.07.1999 and executed a pronote and receipt in lieu thereof in favour of the plaintiff-respondent which was scribed by Gurmail Singh s/o Santokh Singh, resident of Manki. It was also agreed that interest @ 2% per month would be paid to the plaintiff at the time of settling down the accounts. Since the defendant failed to pay the loan with interest, therefore, the suit for recovery was filed by the plaintiff-respondent.

3. The defendant resisted the claim the of plaintiff, filed a written statement and projected by way of preliminary objection that the documents are fictitious documents. There are alterations made in the pronote and receipt. The revenue stamps have been lifted from some

other documents and have been affixed on pronote and receipt. It was also denied that defendant borrowed a sum of Rs.1,50,000/- from the plaintiff. With these pleas, the defendant prayed for the dismissal of the suit.

4. Plaintiff filed replication to the written statement whereby she reiterated the contents of the plaint and denied the written statement. From the pleadings of the parties, the learned Trial Court framed the following issues:-

1. Whether the plaintiff advanced a sum of Rs.1,50,000/- to the defendant on 11.07.1999 and the defendant executed a pronote and receipt in consideration thereof? OPP.
2. Whether the plaintiff is entitled to interest @ 12-1/2% P.A.? OPP.
3. Whether the suit has been filed within limitation? OPP.
4. Whether the pronote and receipt are forged and fabricated documents? OPD.
5. Whether the pronote and receipt are material altered? OPD.
6. Whether the pronote and receipt are not properly stamped and cancelled, as such, the suit is liable to be dismissed on this ground? OPD.
7. Whether the plaintiff has no locus standi and cause of action to file the present suit? OPD.
8. Relief.

5. Both the parties adduced evidence in support of their claim.

6. Both the courts below returned the findings on all the issues in favour of the plaintiff and thereby decreed the suit for the recovery of Rs.1,50,000/- as principal amount along with the interest @ 12.5% per

annum from the date of filing of the execution of the pronote i.e. 11.07.1999 till the realisation of the decretal amount.

7. It is a case in which there is a concurrent finding of fact by the courts below and no substantial question of law has been raised. The substantial question of law raised in the appeal are nothing but the reproduction of the issues framed by the trial court for which evidence has already been led by the parties and appreciated by the Trial Court as well as the First Appellate Court.

8. It is contended by the learned counsel for the appellant that he has attached the statement of Kulwinder Singh-DW/1. He has categorically denied in the cross-examination all the suggestions put by the opposite party. Thus, the testimony of DW/1 Kulwinder Singh has not been taken into consideration. Merely, the suggestions given to the witness which de denied cannot take place of proof.

9. It is further contended by the learned counsel for the petitioner that even if it is proved that pronote was duly executed the passing of consideration has also to be proved. Reliance was placed on **Santa Singh versus Arjan Singh, (P&H) 1992 RRR 195,** wherein para No.9 & 10 of the judgment this aspect has been dealt with.

10. The facts of the aforesaid authority are not attracted to the facts of the present case as in Santa Singh's case (supra) the defendant had brought on record the complaint Ex.D/2 made before the Superintendent of Police which was marked for enquiry into the matter where the compromise was arrived between the parties and the pronote was torn off. Whereas in the instant case, it has come on the record that the defendant had nowhere reported the matter to any of the authorities from the date of execution of the pronote and receipt till the passing of the decree by the trial court that the pronote and receipt are outcome of forgery committed by the plaintiff.

11. In view of the concurrent finding of facts recorded by the courts

below and no substantial question of law is involved in the present appeal. Hence in view of the embargo of Section 100 Clause IV of the Civil Procedure Code, this Court is not to sit as a third court of appreciation of facts.

12. No infirmity is found in the orders of the Additional District Judge, Barnala, as well as of the trial court, hence this appeal is dismissed.

(R.S. Madan)
Judge

31.08.2007
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